

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MARKELYN LAMONTRE JONES,

Petitioner,

v.

CIVIL ACTION NO. 2:22cv251

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's Motion to Dismiss. ECF No. 12. In his Petition, Petitioner alleges violations of his federal rights pertaining to his conviction in the Suffolk Circuit Court for second degree murder, armed common law robbery, use of a firearm in the commission of an abduction, use of a firearm during a felony, and use of a firearm during a robbery. As a result of his conviction, Petitioner was sentenced to an active term of thirty-eight years in prison.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C) and Eastern District of Virginia Local Civil Rule 72. The Magistrate Judge's Report and Recommendation filed July 7, 2023, recommends dismissal of the Petition with prejudice. ECF No. 16. On August 18, 2023, after receiving an extension, Petitioner timely filed objections to the Report and Recommendation. ECF No. 20. Respondent did not respond to Petitioner's objections and the time to do so has expired.

The Court, has reviewed the record, examined the objections filed by Petitioner to the Report and Recommendation, and made *de novo* findings with respect to the portions objected to.

The Court finds that one objection has merit: In the absence of contrary evidence, the Court will assume that the Petition was submitted for mailing on the day it was signed, and thus under the prison mailbox rule the Petition will be credited as being filed on May 26, 2022. *See* Objs. at 2, ECF No. 20. However, the Court finds that this revision does not materially affect the analysis provided by the Magistrate Judge. Accordingly, in all other respects, the Court does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed July 7, 2023. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 12, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

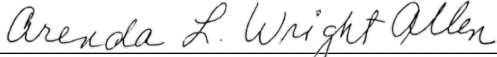
Finding that the procedural basis for dismissal of Petitioner's § 2254 Petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.

Norfolk, Virginia
September 20, 2023



Arenda L. Wright Allen
United States District Judge